

## Estate tax limbo is keeping lawyers busy

Many are drawing up plans that will likely need updating next year

**By Noah Manley**

October 10, 2010

With fewer than a dozen weeks remaining until the end of the year, estate attorneys are scrambling to make sure that ultrarich families who have lost a family member this year make the most of 2010's unusual estate tax lapse.

"It's like there's a fire sale," said Jerry Jones, an estate-planning attorney with Jones & Quinlisk LLC. "And four patriarchs of some of my biggest families have died this year."

Although Congress could reinstate the federal estate tax retroactively to cover 2010, the move is generally thought unlikely. As a result, whatever is put into a trust by someone who dies this year will never be subject to taxation — even if the estate tax returns, as scheduled, in 2011.

With stakes so high, Mr. Jones is busy putting in place estate plans and transfer structures that he knows may have to be jettisoned soon to suit new regulations.

Estate attorney Lynnmarie Johnson concedes that whatever she does over the next few months may have to be revisited next year.

"I try not to be put in that position, but yes, it could certainly be the case," she said.


According to Kenneth Brier of Brier & Geurdin LLP, the best way for attorneys to avoid busywork connected with changes to estate tax laws is to "use formula language that should work in a variety of tax settings" and require little alteration.

Any legal change is expensive. If attorneys have to revamp plans next year to suit new realities in estate regulation, the meter will be running at anywhere between \$200 and \$1,000 per hour.

Attorneys are likely, however, "to give clients some serious discounts," Ms. Johnson said. "We have to eat, but we don't have to get fat," she said.

Lawyers with old and ailing clients are especially aware of this year's unusual tax environment because hundreds of millions of dollars potentially are at stake for individual families. For such ultrawealthy families, it makes sense to have plans in place for all senior family members, even if

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they are healthy, estate attorneys said.

Another worry for estate attorneys, according to Mr. Jones, is uncertainty around the future of grantor-retained annuity trusts. Although hailed by wealth managers as sleek vehicles for making large, and largely tax-free, gifts to family members, GRATs are viewed by some politicians as loopholes for a privileged few.

Moves to restrict them have so far come to nothing, but the vehicles still are under threat. As a result, family office attorneys are scrambling to establish old-line GRATs while they can and trying to come up with new formulations for tax-conscious gift giving to replace GRATs if they are made toothless.

Attorneys are also responding to uncertainty about the impact on high-wealth families of recent financial-industry-reform legislation.

The Dodd-Frank Act seems to leave most family offices free from regulatory oversight. But a minority of such offices are partnerships, and they, as well as those that provide co-investment incentives to employees and others, could be forced to register as investment advisers.

A worse-case scenario brings many more family offices under regulatory scrutiny as legal custodians — an unintended byproduct of paying bills for the families they serve.

Although wealthy families chafe at the compliance costs and loss of privacy associated with registration, some family office attorneys are looking into it anyway, said Christopher Winn of AdvisorAssist, a firm that helps to establish and administer registered investment adviser firms.

Other attorneys are examining the feasibility of family offices' becoming private trust companies instead of RIAs, said Lisa Ryan, a managing director of the family office recruiting firm Rankin Group Ltd.



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